

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 852

**Introduced by Senator Harman
(Coauthor: Senator Hancock)**

February 18, 2011

An act to amend Sections 646.92, 679.03, 3043, 3058.8, and 11155 of the Penal Code, relating to corrections, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 852, as amended, Harman. Corrections: victim notification.

Existing law requires the Department of Corrections and Rehabilitation, county sheriff, and director of the local department of corrections, upon request, to give notice, as specified, prior to the release from state prison or county jail, of any person convicted of specified offenses, or of any change in parole status or relevant change in parole location, or if the person absconds from supervision while on parole, to a victim of the offense and others, as specified. Existing law provides for this notice by telephone and certified mail, and requires those persons requesting notice to provide current address and telephone numbers, as specified.

This bill would authorize providing that notice by telephone, certified mail, or electronic mail, as selected by the requesting party, if that method is available.

Existing law requires the Department of Corrections and Rehabilitation to supply a form to designated agencies in order to enable persons to request and receive notification from the department of the release, escape, scheduled execution, or death of the violent offender.

Existing law requires the agency to give the form to the victim, witness, or next of kin of the victim for completion, explain to that person or persons the right to be so notified, and forward the completed form to the department.

~~This bill would additionally require the Department of Corrections and Rehabilitation to establish notification procedures and inform the designated agencies in order to enable persons requesting notice to request and receive notification from the department of the release, escape, scheduled execution, or death of the violent offender. The bill would require that agencies inform the victim, witness, or next of kin of the victim about the notification procedures and explain to that person or persons the right to be so notified. By imposing new duties on local law enforcement, this bill would impose a state-mandated local program.~~

This bill would provide that a victim, witness, or next of kin of the victim is not precluded from requesting notification using an automated electronic notification process, if available.

Existing law, added by Proposition 8, approved by the voters at the June 8, 1982, statewide primary election and amended by Proposition 9, approved by the voters at the November 4, 2008, statewide general election, requires the Board of Parole Hearings, upon request, to notify the victim, or next of kin of the victim, of any crime committed by a prisoner, of any hearing to review or consider the parole suitability or the setting of a parole date for that prisoner. Proposition 8 provides that this statutory provision shall not be amended by the Legislature except by a statute passed in each house by rollcall vote, $\frac{2}{3}$ of the membership concurring or by a statute approved by the voters. Proposition 9 provides that the statutory provisions of that act shall not be amended by the Legislature, except by a statute passed in each house by rollcall vote, $\frac{3}{4}$ of the membership of each house concurring or by a statute approved by the voters. However, the Legislature may amend those provisions by a majority vote of the membership of each house to expand the scope of those provisions or to further the rights of victims of crimes.

This bill would permit the victim, or next of kin of the victim, to receive that notice, upon request to the department and verification of the identity of the requester, by telephone, electronic mail, or certified mail, using the method selected by the requester, if that method is available. The bill would provide that this act furthers the rights of victims of crimes for purposes of Proposition 9. By amending this provision, the bill would amend Proposition 8. Because the bill would require the verification of the identity of the requester as a condition to

receiving notice, it would amend Proposition 9 in a manner requiring a $\frac{3}{4}$ vote.

Existing law provides that as soon as placement of an inmate in any reentry or work furlough program is planned, but in no case less than 60 days prior to that placement, the Department of Corrections and Rehabilitation shall send written notice, if notice has been requested, to specified requesting parties, to the last address of the requesting party provided to the department.

This bill would authorize the notice to be sent to a victim or next of kin of a victim by telephone, certified mail, or electronic mail, using the method of communication selected by the requesting party, if that method is available, and would require the department to send the notices to the last mailing address, electronic mail address, or telephone number provided to the department by the victim or next of kin of the victim.

The bill would make other conforming changes.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{3}{4}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 646.92 of the Penal Code is amended to
2 read:
3 646.92. (a) (1) The Department of Corrections and
4 Rehabilitation, county sheriff, or director of the local department
5 of corrections shall give notice not less than 15 days prior to the
6 release from the state prison or a county jail of any person who is
7 convicted of violating Section 646.9 or convicted of a felony
8 offense involving domestic violence, as defined in Section 6211
9 of the Family Code, or any change in the parole status or relevant
10 change in the parole location of the convicted person, or if the

1 convicted person absconds from supervision while on parole, to
2 any person the court identifies as a victim of the offense, a family
3 member of the victim, or a witness to the offense by telephone,
4 electronic mail, or certified mail at his or her last known address,
5 upon request and using the method of communication selected by
6 the requesting party, if that method is available. A victim, family
7 member, or witness shall keep the department or county sheriff
8 informed of his or her current contact information to be entitled
9 to receive notice. A victim may designate another person for the
10 purpose of receiving notification. The department, county sheriff,
11 or director of the local department of corrections, shall make
12 reasonable attempts to locate a person who has requested
13 notification but whose contact information is incorrect or not
14 current. However, the duty to keep the department or county sheriff
15 informed of current contact information shall remain with the
16 victim.

17 (2) Following notification by the department pursuant to Section
18 3058.61, in the event the victim had not originally requested
19 notification under this section, the sheriff or the chief of police, as
20 appropriate, shall make an attempt to advise the victim or, if the
21 victim is a minor, the parent or guardian of the victim, of the
22 victim's right to notification under this section.

23 (b) All information relating to any person who receives notice
24 under this section shall remain confidential and shall not be made
25 available to the person convicted of violating this section.

26 (c) For purposes of this section, "release" includes a release
27 from the state prison or a county jail because time has been served,
28 a release from the state prison or a county jail to parole or probation
29 supervision, or an escape from an institution or reentry facility.

30 (d) The department or county sheriff shall give notice of an
31 escape from an institution or reentry facility of any person
32 convicted of violating Section 646.9 or convicted of a felony
33 offense involving domestic violence, as defined in Section 6211
34 of the Family Code, to the notice recipients described in
35 subdivision (a).

36 (e) Substantial compliance satisfies the notification requirements
37 of subdivision (a).

38 SEC. 2. Section 679.03 of the Penal Code, as amended by
39 Section 65 of Chapter 178 of the Statutes of 2010, is amended to
40 read:

679.03. (a) With respect to the conviction of a defendant involving a violent offense, as defined in Section 29905, the county district attorney, probation department, and victim-witness coordinator shall confer and establish an annual policy within existing resources to decide which one of their agencies shall inform each witness involved in the conviction who was threatened by the defendant following the defendant's arrest and each victim or next of kin of the victim of that offense of the right to request and receive a notice pursuant to Section 3058.8 or 3605. If no agreement is reached, the presiding judge shall designate the appropriate county agency or department to provide this notification.

~~(b) The Department of Corrections and Rehabilitation shall supply a form, establish notification procedures, and inform the agency designated pursuant to subdivision (a) in order to enable persons specified in subdivision (a) to request and receive notification from the department of the release, escape, scheduled execution, or death of the violent offender. That agency shall inform the victim, witness, or next of kin of the victim of the notification procedures and explain to that person or persons the right to be so notified. The department or the Board of Parole Hearings is responsible for notifying all victims, witnesses, or next of kin of victims who request to be notified of a violent offender's release or scheduled execution, as provided by Sections 3058.8 and 3605.~~

(b) The Department of Corrections and Rehabilitation shall supply a form to the agency designated pursuant to subdivision (a) in order to enable persons specified in subdivision (a) to request and receive notification from the department of the release, escape, scheduled execution, or death of the violent offender. That agency shall give the form to the victim, witness, or next of kin of the victim for completion, explain to that person or persons the right to be so notified, and forward the completed form to the department. The department or the Board of Parole Hearings is responsible for notifying all victims, witnesses, or next of kin of victims who request to be notified of a violent offender's release or scheduled execution, as provided by Sections 3058.8 and 3605.

(c) All information relating to any person receiving notice pursuant to subdivision (b) shall remain confidential and is not subject to disclosure pursuant to the California Public Records Act

1 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
2 Title 1 of the Government Code).

3 *(d) Nothing in this section precludes a victim, witness, or next*
4 *of kin of the victim from requesting notification using an automated*
5 *electronic notification process, if available.*

6 SEC. 3. Section 3043 of the Penal Code is amended to read:

7 3043. (a) (1) Upon request to the Department of Corrections
8 and Rehabilitation and verification of the identity of the requester,
9 notice of any hearing to review or consider the parole suitability
10 or the setting of a parole date for any prisoner in a state prison
11 shall be given by telephone, certified mail, or electronic mail, using
12 the method of communication selected by the requesting party, if
13 that method is available, by the Board of Parole Hearings at least
14 90 days before the hearing to any victim of any crime committed
15 by the prisoner, or to the next of kin of the victim if the victim has
16 died, to include the commitment crimes, determinate term
17 commitment crimes for which the prisoner has been paroled, and
18 any other felony crimes or crimes against the person for which the
19 prisoner has been convicted. The requesting party shall keep the
20 board apprised of his or her current contact information in order
21 to receive the notice.

22 (2) No later than 30 days prior to the date selected for the
23 hearing, any person, other than the victim, entitled to attend the
24 hearing shall inform the board of his or her intention to attend the
25 hearing and the name and identifying information of any other
26 person entitled to attend the hearing who will accompany him or
27 her.

28 (3) No later than 14 days prior to the date selected for the
29 hearing, the board shall notify every person entitled to attend the
30 hearing confirming the date, time, and place of the hearing.

31 (b) (1) The victim, next of kin, members of the victim's family,
32 and two representatives designated as provided in paragraph (2)
33 of this subdivision have the right to appear, personally or by
34 counsel, at the hearing and to adequately and reasonably express
35 his, her, or their views concerning the prisoner and the case,
36 including, but not limited to the commitment crimes, determinate
37 term commitment crimes for which the prisoner has been paroled,
38 any other felony crimes or crimes against the person for which the
39 prisoner has been convicted, the effect of the enumerated crimes
40 on the victim and the family of the victim, the person responsible

1 for these enumerated crimes, and the suitability of the prisoner for
2 parole.

3 (2) Any statement provided by a representative designated by
4 the victim or next of kin may cover any subject about which the
5 victim or next of kin has the right to be heard including any
6 recommendation regarding the granting of parole. The
7 representatives shall be designated by the victim or, in the event
8 that the victim is deceased or incapacitated, by the next of kin.
9 They shall be designated in writing for the particular hearing prior
10 to the hearing.

11 (c) A representative designated by the victim or the victim's
12 next of kin for purposes of this section may be any adult person
13 selected by the victim or the family of the victim. The board shall
14 permit a representative designated by the victim or the victim's
15 next of kin to attend a particular hearing, to provide testimony at
16 a hearing, and to submit a statement to be included in the hearing
17 as provided in Section 3043.2, even though the victim, next of kin,
18 or a member of the victim's immediate family is present at the
19 hearing, and even though the victim, next of kin, or a member of
20 the victim's immediate family has submitted a statement as
21 described in Section 3043.2.

22 (d) The board, in deciding whether to release the person on
23 parole, shall consider the entire and uninterrupted statements of
24 the victim or victims, next of kin, immediate family members of
25 the victim, and the designated representatives of the victim or next
26 of kin, if applicable, made pursuant to this section and shall include
27 in its report a statement whether the person would pose a threat to
28 public safety if released on parole.

29 (e) In those cases where there are more than two immediate
30 family members of the victim who wish to attend any hearing
31 covered in this section, the board shall allow attendance of
32 additional immediate family members to include the following:
33 spouse, children, parents, siblings, grandchildren, and grandparents.

34 SEC. 4. Section 3058.8 of the Penal Code is amended to read:

35 3058.8. (a) At the time a notification is sent pursuant to
36 subdivision (a) of Section 3058.6, the Board of Parole Hearings
37 or the Department of Corrections and Rehabilitation, or the
38 designated agency responsible for notification, as the case may
39 be, shall also notify persons described in Section 679.03 who have
40 requested a notice informing those persons of the fact that the

1 person who committed the violent offense is scheduled to be
2 released from the Department of Corrections and Rehabilitation
3 or from the State Department of Mental Health, including, but not
4 limited to, conditional release, and specifying the proposed date
5 of release. Notice of the community in which the person is
6 scheduled to reside shall also be given if it is (1) in the county of
7 residence of a witness, victim, or family member of a victim who
8 has requested notification, or (2) within 100 miles of the actual
9 residence of a witness, victim, or family member of a victim who
10 has requested notification. If, after providing the witness, victim,
11 or next of kin with the notice, there is any change in the release
12 date or the community in which the person is to reside, the board
13 or department shall provide the witness, victim, or next of kin with
14 the revised information.

15 (b) In order to be entitled to receive the notice set forth in this
16 section, the requesting party shall keep the department or board
17 informed of his or her current contact information.

18 (c) The board or department, when sending out notices regarding
19 an offender's release on parole, shall use the information provided
20 by the requesting party pursuant to subdivision (b) of Section
21 679.03, unless that information is no longer current. If the
22 information is no longer current, the department shall make a
23 reasonable attempt to contact the person and to notify him or her
24 of the impending release.

25 SEC. 5. Section 11155 of the Penal Code is amended to read:

26 11155. (a) As soon as placement of an inmate in any reentry
27 or work furlough program is planned, but in no case less than 60
28 days prior to that placement, the Department of Corrections and
29 Rehabilitation shall provide notice, if notice has been requested,
30 to all of the following: (1) written notice to the chief of police of
31 the city, if any, in which the inmate will reside, if known, or in
32 which placement will be made, (2) written notice to the sheriff of
33 the county in which the inmate will reside, if known, or in which
34 placement will be made, and (3) notice, as provided in subdivision
35 (d), to the victim, if any, of the crime for which the inmate was
36 convicted or the next of kin of the victim if the crime was a
37 homicide, if the victim or the next of kin has submitted a request
38 for notice with the department. Information regarding victims or
39 next of kin requesting the notice, and the notice, shall be
40 confidential and not available to the inmate.

1 (b) In the event of an escape of an inmate from any facility
2 under the jurisdiction of the department, the department shall
3 immediately notify, by the most reasonable and expedient means
4 available, the chief of police of the city, and the sheriff of the
5 county, in which the inmate resided immediately prior to the
6 inmate's arrest and conviction, and, if previously requested, to the
7 victim, if any, of the crime for which the inmate was convicted,
8 or to the next of kin of the victim if the crime was a homicide. If
9 the inmate is recaptured, the department shall send written notice
10 thereof to the chief of police and the sheriff, and notice to the
11 victim, or next of kin of the victim, within 30 days after regaining
12 custody of the inmate.

13 (c) Except as provided in subdivision (d), the department shall
14 send the notices required by this section to the last address provided
15 to the department by the requesting party. It is the responsibility
16 of the requesting party to provide the department with a current
17 address.

18 (d) Whenever the department provides the notice required by
19 this section to a victim, or next of kin of the victim, it shall do so
20 by telephone, certified mail, or electronic mail, using the method
21 of communication selected by the victim or the next of kin of the
22 victim, if that method is available. In the event the victim's or next
23 of kin's contact information provided to the department is no longer
24 current, the department shall make a diligent, good faith effort to
25 learn the whereabouts of the victim in order to comply with these
26 notification requirements.

27 ~~SEC. 6. If the Commission on State Mandates determines that~~
28 ~~this act contains costs mandated by the state, reimbursement to~~
29 ~~local agencies and school districts for those costs shall be made~~
30 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
31 ~~4 of Title 2 of the Government Code.~~

32 ~~SEC. 7.~~

33 *SEC. 6.* The Legislature finds and declares that this act furthers
34 the rights of victims of crimes for purposes of Proposition 9, as
35 approved by the voters at the November 4, 2008, statewide general
36 election.

37 ~~SEC. 8.~~

38 *SEC. 7.* This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order for the Department of Corrections and Rehabilitation
4 to fully implement an automated victim notification system at the
5 earliest possible time, it is necessary that this act take effect
6 immediately.

O